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SERIAL NUMBER	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
175	05/15/89	HAGENBUCH	30093

LEYDIG, VOIT & MAYER  
ONE IBM PLAZA-STE. 4600  
CHICAGO, IL 60611

EXAMINER

MATTSON, B

ART UNIT

PAPER NUMBER

234

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DATE MAILED:

06/21/90

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                  |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____   |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-30 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 1-30 are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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15. This application has been examined.
16. Applicant is reminded of the proper language and format of an Abstract of the Disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said", should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

17. The Abstract of the Disclosure is objected to because it should be written in complete sentences. As presently written, it begins with a sentence fragment. Further, implied phrases, such as "apparatus..." including", should be avoided. Correction is required. See MPEP 608.01(b).

18. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The claims are not directed to a method, and the title should reflect this fact.

19. The drawings are objected to because in Figure 12, "for-aft" should be "fore-aft". Further, the

abbreviation for average, "avg", should be used consistently. See Figures 12, 14a, 14j, 14k and 24. Correction is required.

20. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following is a list of elements with improper antecedent basis: the operation (claims 1 and 20-27), the performance (claim 1), the direction (claim 2), the elapsed time (claims 6 and 12), the future operation (claim 9), the weight (claim 10), the identity (claim 13), the geographic location (claims 18 and 23), the entity (claims 19 and 24), the relative time (claim 20), the hauling (claim 20), the distance (claim 22), the time (claim 29), the loading (claim 29), the dumping (claim 29) and the routing (claim 30). The use of "the" (or "said") implies a clear antecedent has been established which has not occurred in these instances. Correction of each error is required for clear interpretation of the claimed invention.

Further as per claims 1, 20-27 and 29, the "Comment" at the beginning of each claim is not a part of a properly drafted claim and must be deleted. Further, the references to "at least said first means" or "at least said first and second means" are entirely

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unclear. From what else could data be acquired? Further, the reference to "said data" or "the data" is unclear since it may be referring to more than one set of data. To which is it referring? Further, what is "information regarding performance"? This is so broad and far-reaching as to make the claim extremely ambiguous.

Further as per claims 2 and 16-19, the reference to "the data" is unclear since it is unknown to which it is referring .

Further as per claim 15, line 3 is unclear as written.

Further as per claim 29, the use of "or" renders a claim alternative making the claim, as a whole, indefinite. Further, the bracketed phrase is entirely ambiguous as a part of an original claim. Bracketed portions are found in amended claims.

Further as to all dependent claims, the proper article to begin such a claim is "The", not "A", since it is referring to "The system" already established in the independent claim. All dependent claims are further rejected for being dependent from an insufficient base claim making their own meanings unclear.

21. Claims 1-30 are further rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-94 of

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United States Patent No. 4,839,835. Although the conflicting claims are not identical, they are not patentably distinct from each other because each provides a first means which acquires data, a processor for processing the data and further means for using the data as desired. The ways in which the data is used are all well-known in the art and would have been obvious at the time of the 4,839,835 patent.

22. The obviousness type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mattson whose telephone number is (703) 557-8057.

Any inquiry of a general nature, or relating to the status of this application, should be directed to the Group receptionist whose telephone number is (703) 557-2878.

BM/ayc

06-12-90

*Blal*  
PROSECUTIONS, 11/11  
SUPERVISOR OF PATENT EXAMINERS  
ART. 234

BRIAN M. MATTSON  
EXAMINER  
ART UNIT 234  
*BM*